

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARIF DURRANI,

Petitioner,

vs.
S.A. HOLENCIK, LARRY ALAN BURNS,
ALBERTO GONZALEZ, Attorney
General,

CASE NO. 07CV1249-LAB (NLS)

**CASE STATUS, NOTICE, AND
SCHEDULING ORDER**

Respondents.

On July 10, 2007, petitioner Arif Durrani ("Durrani"), proceeding *pro se*, filed a Petition For Writ of Habeas Corpus ("Petition") purportedly pursuant to 28 U.S.C. § 2241. The case was originally assigned to District Judge Napoleon A. Jones, then was reassigned to the undersigned District Judge.¹ In a Discrepancy Order entered August 1, 2007, the court rejected a claim for return of property, indicating that claim was part of the habeas petition and would be dealt with in the normal course.

The court finds the petition actually seeks relief appropriately pursued under 28 U.S.C. § 2255. Durrani asserts he has suffered an "illegal conviction" in case numbers 06mc0160-IEG and 05cr1746-LAB, contending the conviction was for a different offense,

¹ Durrani purports to name the undersigned District Judge as a Respondent. The court construes the petition as seeking 28 U.S.C. § 2255 relief.

1 in purported violation of 18 U.S.C. § 3192, the doctrine of specialty, and Fifth Amendment
 2 due process. He attaches to his petition a Ninth Circuit Order filed March 30, 2007 in Case
 3 No. 06cv1730-LAB(JMA), which is the subject of separate proceedings in this court following
 4 the vacating of the Judgment in the latter case, with instructions on remand. The Ninth
 5 Circuit concurred with this court in that earlier case the habeas relief Durrani sought there
 6 was also appropriately construed as motion under Section 2255 rather than a petition for
 7 28 U.S.C. § 2241 relief, as he had styled it.

8 The court has considered Durrani's arguments in the instant petition and rejects his
 9 characterization of the relief and grounds for relief in his circumstances in this case as other
 10 than a Section 2255 motion. However, before the court can recharacterize a *pro se* filing as
 11 a Section 2255 motion, it must provide the following explanation, notice, and admonitions:

12 In such circumstances the district court must **notify** the *pro se*
 13 litigant that it intends to recharacterize the pleading, **warn** the
 14 litigant that this recharacterization means that any subsequent
 15 § 2255 motion will be subject to the restrictions on "second or
 16 successive" motions, and **provide the litigant an opportunity**
 17 **to withdraw the motion or to amend it** so that it contains all
 18 the § 2255 claims he believes he has. If the court fails to do so,
 19 the motion cannot be considered to have become a § 2255
 20 motion for purposes of applying to later motions the law's
 21 "second or successive" restrictions. § 2255, ¶ 8.

22 Castro v. United States, 540 U.S. 375, 382 (2003) (emphasis added).

23 The court hereby notifies Durrani of its intent to construe and process his petition in
 24 this case as a Section 2255 motion rather than a Section 2241 Petition. The court hereby
 25 warns Durrani of the consequences of that treatment:

26 Under a longstanding practice, a court sometimes treats
 27 as a request for habeas relief under 28 U.S.C. § 2255 a motion
 28 that a *pro se* federal prisoner has labeled differently. Such
 1 recharacterization can have serious consequences for the
 2 prisoner, **for it subjects any subsequent motion under § 2255**
 3 **to the restrictive conditions that federal law imposes upon**
 4 **a "second or successive" (but not upon a first) federal**
 5 **habeas motion.** § 2255, ¶ 8.

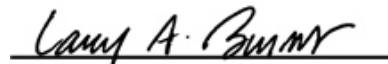
26 Castro, 540 U.S. at 377 (emphasis added).

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1 Before proceeding, the court provides Durrani with this "opportunity to withdraw, or
2 to amend" the filing (*Castro*, 540 U.S. at 377, 382), in consideration of the potential
3 consequences. **IT IS HEREBY ORDERED** Durrani may file a request to withdraw his
4 current petition, or to file an Amended Petition on or before **October 31, 2007**. If he neither
5 withdraws nor amends his petition by that deadline, the court will proceed to reach the merits
6 of his petition construed as a Section 2255 Motion. If he does not timely withdraw the
7 petition, **IT IS HEREBY ORDERED** Respondents shall serve and file a Response to the
8 petition or Amended Petition on or before **November 26, 2007**, and Durrani may serve and
9 file a Reply on or before **December 24, 2007**, with the matter thereafter under submission
10 for decision on the papers.

11 **IT IS SO ORDERED.**

12 DATED: September 27, 2007

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14 HONORABLE LARRY ALAN BURNS
United States District Judge

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